

TAXATION: In assessing franchises of public utilities under Section 11240 R. S. Missouri, 1939, the value of such is to be listed under heading of "all other property."

May 25, 1942

Honorable Jesse A. Mitchell,
Chairman
State Tax Commission
Jefferson City, Missouri



Dear Sir:

In your letter of May 4, 1942, you present the following question: In the assessment of public utilities under Sections 11240 and 11241, R. S. Missouri, 1939, must there be a separate valuation placed on the "franchises" of such corporations, or is that valuation to be reflected under the heading of "all other property?"

Section 11240, R. S. Missouri, 1939, provides:

"The franchises (other than the right to be a corporation) of all railroad, street railroad, bridge, telegraph, telephone, conduit, water, electric light and gas companies, and of all other similar corporations owning, operating and managing public utilities, and of all quasi public corporations possessing special and peculiar privileges and authorized by law to perform any public service (except corporations formed for religious, educational and benevolent purposes) shall be assessed for the purposes of taxation at the same time and in the same manner as other property of such corporation is now or may hereafter be required to be assessed; and there shall be levied upon the assessed value of such franchise the same rate of taxation as may be levied upon other proper-

ty of such corporation. Said tax shall be due and payable, and like proceedings may be had to collect the same, and when collected it shall be disposed of in the same way as the taxes imposed upon the other property of such corporation."

Epitomized, that section requires the "franchises" of all corporations owning, operating and managing public utilities to be assessed for taxation purposes at the same time and in the same manner as other property of such corporation is assessed; there is to be levied on the assessed value of such "franchise" the same rate of taxation levied upon other property of the corporation; and the same is made due, payable and collectible, the same as other property taxes.

Section 11241, R. S. Missouri, 1939, provides:

"The state board of equalization in cases of railroads, street railroads, bridges, telegraph, telephone companies and all other corporations whose property the state board of equalization is now or may hereafter be required to assess, and the county assessor, in case of the other quasi public corporations referred to in the preceding section, shall ascertain, fix and determine the total value for taxable purposes of the entire property of such corporation, tangible and intangible, in this state, and shall then assess the tangible property and deduct the amount of such assessment from the total valuation and enter the remainder upon the assessment list or in the assessor's books, under the head of 'all other property.'"

Epitomizing this section, it appears that the state board of equalization is required to do four things. They are: (1) ascertain, fix and determine the total value, for taxable purposes, of the entire property of such corporation, tangible and intangible, in this state; (2) assess the tangible property; (3) deduct the amount of such (the tangible property) assessment from the total valuation, and (4) enter the remainder upon the assessment list, under the head of "all other property."

In *State v. St. L. & E. St. L. Elec. Ry. Co.*, 216 S. W. 763, (Mo. Sup.) the court in dealing with these same statutes said, l. c. 765:

"Appellant insists that the tax assessment is illegal because the defendant owns no railroad franchises except the franchise to be a corporation, which is a nontaxable one. This is a misconception. The defendant does own railroad franchises other than that implied in that of a grant of a charter to it. It possesses, by the terms of its charter, the right to contract and operate a railroad. The bridge over which its track is laid is, in a general sense, a public highway. Under the Constitution of this state, its right to operate its street railway over the public highway (the bridge) could only be exercised by the consent of the local authorities having control of the highway proposed to be occupied by such street railway. Const. art. 12, sec. 20. When it obtained this permission to operate its street railway on this public highway for 50 years, the legislative grant instantly became effective, and vested in appellant a valuable franchise, wholly distinct from its franchise of artificial

entity (State ex rel. v. Railroad, 140 Mo. loc. cit. 549, 41 S. W. 955, 38 L. R. A. 218, 62 Am. St. Rep. 742), and one which is specifically assessable for taxation under the terms of the statutes providing for taxation of franchises. State ex rel. v. Wiggins Ferry Co., 208 Mo. 622, 106 S. W. 1005. Proceeding under these statutes, and in accordance with the method prescribed in a subsequent section (11559, R. S. 1909), the board of equalization assessed and adjusted the taxes laid on defendant's franchises on a mileage basis, and after the hearing of evidence, and in so doing it arrived at the conclusion that the value of the intangible property of defendant in Missouri was \$173,000.16. It referred to this specific assessment as one made on 'all other property' of defendant, a method of distinguishing the various items approved in State ex rel. v. Wiggins Ferry Co., 208 Mo. 622, 106 S. W. 1005. * * * * * (Underscoring ours.)

In the Wiggins Ferry Co., case, 208 Mo. 622, referred to in the preceding case as approving this statutory method of distinguishing the various items in Sections 11240 and 11241, the point involved was whether the items lumped under "all other property" consisted of the value of a franchise to operate a ferry across the Mississippi River. The Ferry Company sought to prove such was a fact, and if such were so the court said, (l. c. 643): " * * * the levy would be clearly invalid, for the reason that it would be a tax imposed by a State upon interstate commerce, which is prohibited by the Constitution and laws of the United States." The court rejected the Ferry Company's version of what was included within the assessment for "all other property", but accepted the State's version, as follows, at l. c. 645:

"The appellant's oral evidence, while very meager, tends, however, to prove that 'all other property at \$30,000,' mentioned in the assessment, was an assessment against the railroad in question for the right and privilege of constructing, maintaining and operating the road in this State, in connection with its right to conduct its business wherever the system of lines belonging to the three combined companies extend, all representing a unity of use in the entire corporate property of the three corporations, thereby making the same much more valuable than it otherwise would be for use separately and independently of each other. The evidence also tends to show that the State Board of Equalization in arriving at the value of the railroad in question, after making an investigation and hearing evidence, ascertained the kind and amount, as well as estimated the fair value, of the tangible and intangible property of the three companies as an entire system of transportation, at a certain sum, not including, however, the value of the right of each of said companies to be corporations. The board then ascertained the value of the tangible property of all of the companies and deducted that sum from the total value of the tangible and intangible property of the three companies, thereby fixing the value of the intangible property. * * * * *

In ruling the point the court said, at l. c. 647:

"* * * from the record before us we are unable to concur in the views that

the value of the franchise of the Ferry Company was included in the board's estimate of the value of the intangible property of those companies. Our understanding of the evidence is that the franchises of all three companies, that is, the rights to be a corporation and to conduct a ferry and a railroad business, were excluded from that estimate; but the value of the rights and privileges of those companies, acting in unison as one company, to construct, maintain and operate a system of railroad in this State in connection with and a part of a system in another State, was included in the valuation upon which the assessment was based."

Then, at l. c. 651, the court said of this situation:

"If the facts of this case are as we understand them to be, then we are clearly of the opinion that the assessment is valid and that the taxes should be paid, * * * * * ."

It thus seems apparent from these excerpts the court approved, as the Electric Ry. Co., case so holds, the method of lumping into "all other property" the franchises taxable under Section 11240.

CONCLUSION

It therefore is our opinion that in the assessment of public utilities under Sections 11240 and 11241 R. S.

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Missouri, 1939, it is not necessary that there be a separate valuation placed on the "franchises" of such corporations, but that valuation is to be reflected along with other intangible items under the head of "all other property."

Respectfully submitted

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